



An official website of the United States government.



We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.

Close X



Derive Systems Clean Air Act Settlement

(Washington, DC - September 24, 2018) - The U.S. Department of Justice and U.S. Environmental Protection Agency (EPA) announced a settlement with Derive Systems (Derive) addressing the sale of approximately 363,000 aftermarket products which the United States alleges were designed, in part, to defeat the emissions control systems of cars and trucks in violation of the Clean Air Act. The settlement (or Consent Decree) provides a path for compliance to allow the continued sale, purchase and use of some of Derive's products. Specifically, the Consent Decree provides a phase-out period for certain features on existing products, and newly introduced products must meet certain standards. Some existing products can be sold as-is. Further details are found in the Consent Decree.

Settlement Resources

- [Press Release](#)
- [Consent Decree](#)
- [Complaint](#)

- [Overview](#)
- [Alleged Violations](#)
- [Injunctive Relief](#)
- [Pollutant Impacts](#)
- [Health Effects and Environmental Benefits](#)
- [Civil Penalty](#)
- [Comment Period](#)
- [Contact](#)

Overview of Company

Derive Systems, Inc. sells aftermarket products marketed under the brand names Bully Dog and SCT for many types of gasoline- and diesel-fueled motor vehicles. The products are sold either online through Derive's website (www.derivesystems.com) or through Derive's distribution network. Derive's primary location is in Sanford, Florida although the company has employees in multiple locations, including Broomfield, Colorado, and Pocatello, Idaho.

Alleged Violations

<https://www.epa.gov/enforcement/derive-systems-clean-air-act-settlement>

Derive manufactured and sold custom tuning software called the Advantage III Software, software products known as “tunes,” and handheld devices known as “tuners” with preloaded tunes. EPA alleges that these products are designed to access and overwrite the original vehicle manufacturer’s software that was designed to reduce air pollution and comply with the Clean Air Act. Derive sold approximately 363,000 such aftermarket defeat devices over the course of many years.

For example, Derive’s tunes can enable the complete removal of emission control components that reduce tailpipe emissions (including catalysts and exhaust gas recirculation systems) by rendering inoperative elements of vehicle on-board diagnostic systems. These are required elements of design in accordance with Title II of the Clean Air Act, the EPA’s regulations at 40 C.F.R. Part 86, and the applicable Certificates of Conformity issued by the EPA.

Derive sold parts or components for motor vehicles and motor vehicle engines that bypass, defeat, or render inoperative elements of design that were installed by the vehicle or engine original equipment manufacturer (OEM) to comply with Clean Air Act emission standards. Accordingly, EPA alleges that Derive violated section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B).

Injunctive Relief

The Consent Decree specifies steps Derive must take to prevent future violations. Derive may sell its products if it complies with the requirements contained in the Consent Decree. Derive will spend approximately \$6.25 million to implement the following injunctive relief:

- Some features of existing products must be discontinued to ensure that they are Clean Air Act-compliant (for example, by removing user-adjustable features that can turn off exhaust gas recirculation or rear oxygen sensors, or sensors in the onboard diagnostic system) according to a compliance schedule.
- For all new and existing tuners offered for sale, Derive must have a reasonable basis demonstrating that the use of the tuners will not adversely affect vehicle emissions, according to a process and schedule specified in the Consent Decree.
- Under the Consent Decree, one way to demonstrate a reasonable basis for a specific tuner would be to obtain an Executive Order from the California Air Resources Board (CARB). Any of Derive’s products covered by a CARB Executive Order are legal for sale.
- The Consent Decree does not require Derive to immediately recall its products from dealers, distributors or customers. Derive will be required, however, to conduct testing of existing products, and by specified deadlines in 2019 and 2020, Derive must modify or destroy any tuners in the inventory of authorized dealers if the tuners have the above-referenced user-adjustable features. The use of these user-adjustable features to bypass, remove disable or reduce the effectiveness of exhaust gas recirculation, filters or catalysts on an EPA-certified motor vehicle has been and remains subject to EPA enforcement.
- Derive must limit access to key emission control parameters in the Advantage III Software and create a customer verification program for users of this software.
- Derive must not advertise or provide training to demonstrate how consumers can defeat emission controls in their vehicles, and work with their national distributors to prevent the sale of their products if they are packaged with companion defeat devices, such as “delete” pipes.
- Derive must train their employees to comply with the Clean Air Act.

Pollutant Impacts

Today's vehicles emit far less pollution than vehicles of the past. This is made possible by careful engine calibrations, and the use of filters and catalysts in the exhaust system. Aftermarket defeat devices undo this progress, and pollute the air we breathe. The emissions impact depends on the original vehicle design, and the extent of the vehicle modifications. EPA testing has shown that a truck's emissions increase drastically (tens or hundreds of times, depending on the pollutant) when its emissions controls are removed. Even when the filters and catalysts remain on the truck, EPA testing has shown that simply using a tuner to recalibrate the engine (for the purpose of improving fuel economy) can triple emissions of NO_x.

Health Effects and Environmental Benefits

The Clean Air Act aims to reduce emissions from mobile sources of air pollution, including NO_x. Mobile sources of air pollution contribute approximately 58% of the nation's oxides of nitrogen emissions. EPA testing demonstrates that certain tuners alleged to be in violation result in increased NO_x emissions from mobile sources. These tuners also enable the removal of catalysts and filters, which can also increase emissions of particulate matter and further increase emission of NO_x.

NO_x emissions pose significant health and environmental concerns. Oxides of nitrogen form when fuel burns at high temperatures. Oxides of nitrogen can travel long distances, causing a variety of health and environmental problems in locations far from their emissions source, including ozone and smog. Oxides of nitrogen also contribute to the formation of particulate matter (PM) through chemical reactions in the atmosphere, and particulate matter can cause asthma, difficult or painful breathing, and chronic bronchitis, especially in children and the elderly.

The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease, aggravated asthma and acute respiratory symptoms including aggravated coughing and difficult or painful breathing, chronic bronchitis and decreased lung function that can be experienced as shortness of breath. Symptoms of immunological effects such as wheezing and increased allergenicity have also been observed. Diesel exhaust particulate matter is of special concern. The EPA's Clean Air Scientific Advisory Committee has concluded that diesel exhaust is likely to be carcinogenic to humans. In addition to these health effects, particulate matter generally causes damage to, and soiling of, commonly used building materials and culturally important items such as statues and works of art. It is also a major cause of substantial visibility impairment in many parts of the United States.

Civil Penalty

Derive will pay a civil penalty of \$300,000, as the company has limited financial ability to pay a higher penalty.

Comment Period

The proposed settlement, lodged in the U.S. District Court for the District of Columbia, is subject to a 30-day public comment period and final court approval. Information on submitting comment is available at the [Department of Justice](#).

For more information, contact:

Kathryn Caballero, Margaret Alkon and Andy Zellinger
EPA Office of Civil Enforcement and EPA Region 9
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 2242A
Washington, D.C. 20460
caballero.kathryn@epa.gov - 202-564-1849
alkon.margaret@epa.gov - 415-972-3890
zellinger.andrew@epa.gov - 415-972-3093

LAST UPDATED ON OCTOBER 4, 2018